

**UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT**

UNITED STATES OF AMERICA	:	
	:	
v.	:	Criminal Docket No.
	:	3:04 CR 305 (CFD)
MOHAMMED AMIN UL ISLAM	:	

**RULING ON DEFENDANT’S MOTIONS TO SUPPRESS**

Mohammed Amin Ul Islam (“Islam”) was indicted by a grand jury on October 13, 2004, for Misuse of a Passport in violation of 18 U.S.C. § 1544. Islam allegedly attempted to use his son’s United States Passport to travel with a different child from Dhaka, Bangladesh to London, England. Islam has filed two motions to suppress statements he made to a United States Consular Officer at the American Embassy in Dhaka, and to a Special Agent of the United States Department of State in Connecticut. Islam argues that he should have been given a Miranda warning at the embassy in Bangladesh, and because he was not, his oral and written statements were made in violation of his Fifth Amendment right against self-incrimination. He also argues that the statements made in Bangladesh were made involuntarily, in violation of his Fifth Amendment due process rights. He argues that the oral statement made in Connecticut is inadmissible because he did not validly waive his Fifth Amendment right against self-incrimination and his Sixth Amendment right to counsel. He also argues that he made the statement involuntarily in violation of his Fifth Amendment due process rights. For the following reasons, his motions are denied.

The Court held an evidentiary hearing on February 7 and February 15, 2006. The

following are the Court's findings of fact and conclusions of law.

## **I. Findings of Fact**

Islam is a native of Bangladesh, but was naturalized as a United States citizen in 1998. On February 8 or 9, 2002, Islam and a child he was traveling with were stopped at Zia International Airport in Dhaka, Bangladesh. Islam had two United States passports, his own and the passport for his then six year old son. Islam and the boy had tickets to travel to London, England. Before boarding the plane, they were stopped by Canadian Foreign Service Officer David Clark. Clark approached Islam when he noticed that the boy was wearing sunglasses and a baseball cap with the brim low on his face. Clark, who had thirty years of experience as a foreign service officer, determined that it was unusual for most Bangladeshi children to dress that way. Clark asked Islam in English for the passports and asked the boy to remove his hat and sunglasses. After reviewing the passports, Clark determined the boy did not appear to be Islam's son.

Because Islam had already obtained exit stamps for both passports, Clark gave the passports to airline personnel, who had the stamps voided. The passports were then returned to Clark. Islam was given a letter stating that the passports would be delivered to the American Embassy in Dhaka, where he could seek to retrieve them. Islam and the boy then left the airport.

Clark contacted Lynn Gutensohn, a Fraud Prevention Manager for the United States Department of State at the United States Consular Office at the American Embassy in Dhaka. Clark took the passports to Gutensohn, and the two determined that it was likely that Islam would soon appear at the American Embassy with his son. They agreed that when Islam arrived

at the American Embassy, Clark would assist Gutensohn determine whether the boy was the one who had been at the airport.<sup>1</sup> Neither Clark nor Gutensohn wore uniforms, were armed, or were authorized to make arrests at any time.

On the morning of February 10, 2002, Islam arrived alone at the American Embassy, but was told by Gutensohn that he should return with his son. Later that day, he returned with his wife, son, and infant daughter. The embassy maintained building security at entrance points, but not in the public consular area. Islam was, according to his testimony, “not worried,” and instead was “quite normal” when he arrived at the embassy and began speaking with Gutensohn.

On his return to the embassy with his family, Islam entered a general waiting room that had a window area separating State Department personnel from the public. When Islam was called to be interviewed, he entered a booth with his family. The booth had a door that closed to allow for privacy from the rest of the waiting room, but did not lock. Those interviewed were free to enter and exit the booths as they wished. The booths abutted the bullet-proof glass window known as the “hardline.” The consular officers sat on the other side of the hardline and communicated with a microphone. Gutensohn was on the consular side of the hardline. Clark had arrived and was also standing on the consular side of the hardline, but around the corner from Gutensohn. He was out of the Islams’ sight, but he could hear what they were saying.

Gutensohn administered an oath to Islam, and then interviewed him. She did not tell Islam he could not leave. Islam stated that he and his son had been at the airport together. Gutensohn then asked Clark to step forward. Islam slumped in his chair upon seeing Clark, who indicated to Gutensohn that Islam’s son was not the boy with Islam at the airport. Gutensohn

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<sup>1</sup>Clark and Gutensohn knew each other from prior professional experience.

then said, "you haven't been telling me the truth up until this point and so now I need to have you tell me the truth." Gutensohn asked him again whether the boy at the airport was his son. Islam stated that the boy who was with him at the airport was not his son but rather the son of his cousin. Gutensohn asked Islam for a written statement, which he hand-wrote. Islam's written statement stated in English, "I use my child passport. But this child not my. My child name Saad Ul Islam. I go to London with my relative - Tariq Islam son."

Because there were many travel stamps on the passport of Islam's son, Gutensohn was interested in finding out whether he had traveled so frequently. She asked to speak to the son alone. Either Islam or his son opened the door of the booth to allow the boy to go to another booth. He stated that his father told him to say that he had been at the airport, but he had not been there. He also said that, except for coming to Bangladesh from the United States, he had never traveled by plane. Islam's son then rejoined his family.

Gutensohn informed Islam that she had to keep the passports because they were the property of the United States Government, and she needed to continue investigating what happened at the airport. Islam and his family then left the embassy. Gutensohn spoke to Islam and his son in English during the interviews, but used a translator to speak to his wife. Islam understood English sufficiently at the interview.<sup>2</sup>

In late December 2003, Islam traveled to the United States using a State Department letter authorizing his travel without a passport. After landing at Kennedy Airport, Islam came to Connecticut to stay with his brother, Sharif Islam, in Newington. On January 5, 2004, State

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<sup>2</sup>Islam testified at the suppression hearing that at the time of the Gutensohn interview he was suffering from injuries sustained in a grenade attack in 2000, and that those injuries affected him during the interview. The Court does not credit that testimony.

Department Special Agent Christine Trulli called the home of Sharif Islam and asked for “Mr. Islam.” Although Trulli believed that she spoke to the defendant, she apparently spoke to the defendant’s brother. In that call, Trulli stated that she had Islam’s passports and that he could come to the Connecticut Passport Office in Norwalk, Connecticut, to receive them.

On January 6, 2004, Islam was accompanied by his brother to the Passport Office. He entered a large waiting room and made his presence known to State Department personnel. Shortly thereafter, a woman opened a door on the side of the waiting room, and asked Islam to come with her. Islam was brought to an interview room that was divided into two small areas by a wall with a plexiglass window. On one side of the window were Islam, Trulli, and her supervisor, Joseph Pendergast. Trulli identified herself as a federal agent and arrested Islam for misuse of a passport. She then told him of his Miranda rights in English, and also gave him a written, transliterated,<sup>3</sup> version in Bangla that had been provided through an email to Trulli by an embassy official in Bangladesh. Islam read the Bangla version, which provided the same information provided by Trulli in the English version of the Miranda warning. When Trulli asked Islam if he understood those rights, Islam nodded that he did. Islam then reiterated the same confession to Trulli that he had given to Gutensohn at the embassy in Bangladesh: the boy with him at the airport in Bangladesh was not his son. Trulli immediately noted his statement on a piece of paper.

Although Islam had been communicating with Trulli in English without apparent difficulty, after he made the incriminating statement he became more nervous, so Trulli decided

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<sup>3</sup>The transliterated version of the Miranda rights were printed in Roman characters. Islam’s personal pocket notebook of addresses and telephone numbers had numerous entries, and they were primarily in Roman characters.

to wait for an interpreter to continue. At this point, Sharif Islam was invited into the room and was informed that his brother was under arrest and would be taken to the federal courthouse in Bridgeport. Islam was then taken to the U.S. Marshal's Office for processing. After the interpreter arrived, Trulli continued to interview Islam, who changed his story, stating that it was his son with him at the airport in Bangladesh. After a short time, the interview was stopped by the arrival of Islam's counsel.

Islam understood the Miranda warnings provided by Trulli in Norwalk and indicated his willingness to waive them before giving his incriminating statement.

## **II. Conclusions of Law**

Islam seeks to suppress the confessions he made at the American Embassy in Dhaka, Bangladesh and at the Connecticut Passport Office in Norwalk. He argues that he should have been given a Miranda warning at the embassy, and because he was not, his oral and written statements were made in violation of his Fifth Amendment right against self-incrimination, and were made involuntarily in violation of his Fifth Amendment right to due process. He argues that the statement he made in Norwalk is inadmissible because he did not validly waive his Miranda rights, and therefore his statement was made in violation of his Fifth Amendment right against self-incrimination and his Sixth Amendment right to counsel. He also argues that the statement was made involuntarily in violation of his Fifth Amendment due process rights.

**A. Interview of February 10, 2002 in Dhaka, Bangladesh**

**i. “Custody” Requirement for Miranda Warnings**

"Miranda warnings are required only where there has been such a restriction on a person's freedom as to render him 'in custody'." Oregon v. Mathiason, 429 U.S. 492, 495 (1977). Whether a person was "in custody" is a mixed question of law and fact that requires the Court to determine, "first, what were the circumstances surrounding the interrogation; and second, given those circumstances, would a reasonable person have felt he or she was not at liberty to terminate the interrogation and leave." Thompson v. Keohane, 516 U.S. 99, 112 (1995). "[T]he initial determination of custody depends on the objective circumstances of the interrogation, not on the subjective views harbored by either the interrogating officers or the persons being questioned." Stansbury v. California, 511 U.S. 318, 323 (1994). "The test used in determining whether a defendant was in custody is an objective one. It asks whether a reasonable person in the defendant's position would have understood himself to be 'subjected to restraints comparable to those associated with a formal arrest.'" United States v. Mitchell, 966 F.2d 92, 98 (1992), citing Berkemer v. McCarty, 468 U.S. 420, 441 (1984) (citations omitted).

Generally, absent an arrest, a defendant is not 'in custody,' "unless the authorities affirmatively convey the message that the defendant is not free to leave." United States v. Mitchell, 966 F.2d 92, 98 (2d Cir. 1992). "[A] custodial setting is one providing 'inherently coercive pressures that tend to undermine the individual's will to resist and to compel him to speak.'" Id. citing United States v. Morales, 834 F.2d 35, 38 (2d Cir. 1987).

Islam was not in custody at the American Embassy in Bangladesh. Twice, Islam voluntarily came to the embassy to retrieve his passports. He was not obligated to remain at the

embassy, nor was he required to answer Gutensohn's questions or provide a written statement. While not dispositive, Islam testified that it was his subjective understanding that he was not under arrest at the embassy in Dhaka. Indeed, he testified that when he came to the embassy, he was "not worried" and felt "entirely normal." Neither Gutensohn, nor anyone else at the embassy, threatened or coerced Islam in any way. Islam was with his family at all times, and Gutensohn was separated from them by the hardline. Although the door to the interview room was closed, it did not lock and Islam was free to leave it at any time. A reasonable person in Islam's situation would conclude that he or she was not in custody. This case is much like United States v. Mitchell, where the Second Circuit found that, "Mitchell willingly cooperated with the EPA representatives, free from coercive influences that could reasonably have been understood as constituting a restriction on his freedom to terminate the interview, or inducing a belief that submission to the will of the interrogating official was mandated." 966 F.2d 92, 99 (2d Cir. 1992). Although Gutensohn told Islam to tell the truth, like the situation in Mitchell, "neither that admonition or Mitchell's resulting nervousness tends to establish any indication . . . that Mitchell was not free to leave or terminate the interview." Id. This situation does not establish a custodial interrogation of the type contemplated by Miranda v. Arizona, 384 U.S. 436 (1966), where the Supreme Court recognized that "the coercion inherent in custodial interrogation blurs the line between voluntary and involuntary statements, and thus heightens the risk 'that the privilege against self-incrimination will not be observed.'" Missouri v. Seibert, 542 U.S. 600, 608 (2004) quoting Dickerson v. United States, 530 U.S. 428, 425 (2000).

The Court finds that Islam was not subject to custodial interrogation at the American Embassy in Bangladesh. His written and oral statements to Gutensohn, therefore, will not be



suppressed for this reason.

## **ii. Voluntariness of Confessions**

The Government bears the burden of proof by a preponderance of the evidence that Islam made his oral and written statements to Gutensohn voluntarily. Missouri v. Seibert, 542 U.S. 600, 609 (2004). “[C]oercive police activity is a necessary predicate to the finding that a confession is not ‘voluntary’ within the meaning of the Due Process Clause of the Fourteenth Amendment.” Colorado v. Connelly, 479 U.S. 157, 167 (1986). The Court must consider the totality of the circumstances. Beckwith v. United States, 425 U.S. 341, 348 (1976); Mast, 735 F.2d at 750. In doing so, the issue is whether the conduct of the “law enforcement officials was such as to overbear petitioner’s will to resist and bring about confessions not freely self-determined – a question to be answered with complete disregard of whether or not petitioner in fact spoke the truth.” Rogers v. Richmond, 365 U.S. 534, 544 (1961). In making this determination as to the voluntariness of Islam’s statements, the Court must consider factors such as, “the type and length of the questioning, the defendant’s physical and mental capabilities, and the government’s method of interrogation,” United States v. Mast, 735 F.2d 745, 749 (1984) citing United States v Venator, 568 F. Supp. 832, 835 (N.D.N.Y. 1983), as well as “the accused age, his lack of education or low intelligence, the failure to give Miranda warnings, the length of detention, the nature of the interrogation, and any use of physical punishment.” Campaneria v. Reid, 891 F.2d 1014, 1020 (2d Cir. 1989).

The Court concludes that Islam’s oral and written statements at the American Embassy in Bangladesh were made voluntarily. Neither Gutensohn nor Clark acted unreasonably towards

Islam, much less overbore his will or coerced him. Although Islam was instructed to come to the embassy to recover his passports, he did so voluntarily twice. While the embassy building had security stations at its entrance, the interview area was separate and not in a coercive setting. Islam's testimony also indicates that he was not intimidated. Although Gutensohn encouraged Islam to tell the truth, she did not unduly pressure him, indicate in any way his freedom was restricted or mislead him. See Mitchell, 966 F.2d at 99. Finally, the type of questioning by Gutensohn, including her manner and appearance, was not intimidating. Therefore, the oral and written statements that Islam provided at the embassy in Bangladesh were made voluntarily and will not be suppressed on this basis.

#### **B. Interview of January 6, 2004 in Norwalk, Connecticut**

Islam also seeks to exclude his confession in Norwalk, Connecticut, on the grounds that he did not effectively waive his Miranda rights,<sup>4</sup> and that the confession was obtained involuntarily in violation of his Fifth Amendment right to due process.<sup>5</sup>

##### **i. Waiver of Miranda Rights**

Incriminating statements made by a person in custody are only admissible if they were made after that person voluntarily waived his or her Miranda rights. Colorado v. Connelley, 479

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<sup>4</sup>There is no dispute that Islam was "in custody" in Norwalk for the purposes of Miranda.

<sup>5</sup> The Fifth Amendment voluntariness examination may involve the right against self-incrimination as well as the right to not be compelled to make self-incriminating statements encompassed by due process. Colorado v. Connelly, 479 U.S. 157 (1986); Miranda v. Arizona, 384 U.S. 436 (1966).

U.S. 157, 169 (1986). Indeed, “Miranda protects defendants against government coercion leading them to surrender rights protected by the Fifth Amendment.” Id. at 170. The Government bears the burden of proving by a preponderance of the evidence that the waiver was knowing and voluntary. United States v. Scarpa, 897 F.2d 63, 68 (2d Cir. 1990); North Carolina v. Butler, 441 U.S. 369, 373 (U.S. 1979) (“The courts must presume that a defendant did not waive his rights.”) The waiver of Miranda rights requires that:

First, the relinquishment of the right must have been voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion, or deception. Second, the waiver must have been made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it. Only if the "totality of the circumstances surrounding the interrogation" reveals both an uncoerced choice and the requisite level of comprehension may a court properly conclude that the Miranda rights have been waived.

Moran v. Burbine, 475 U.S. 412, 421 (1986). “An express written or oral statement of waiver of the right to remain silent or of the right to counsel is usually strong proof of the validity of that waiver, but is not inevitably either necessary or sufficient to establish waiver.” Butler, 441 U.S. at 373.

Islam argues that he did not waive his Fifth Amendment right against self-incrimination and his Sixth Amendment right to counsel. However, the Miranda warning Islam was given included statements as to both rights. He was told that anything he said could and would be used against him in a court of law, and that he had the right to have an attorney present. Therefore, if Islam validly waived his Miranda rights, his waiver covered his Fifth Amendment right against self-incrimination and his Sixth Amendment right to counsel.

Islam was informed of his Miranda rights in both English and in a transliterated version

of his native language, Bangla, and indicated that he understood his rights by nodding. Affirmative nods have been upheld as valid indications that defendants understand their rights. See Jenkins v. Leonardo, 991 F.2d 1033, 1038 (2d Cir. 1993) (finding that the defendant validly waived his right to counsel when he nodded that he understood his rights); United States v. Villegas, 928 F.2d 512, 519 (2d Cir. 1991) (finding that the defendant validly waived his Miranda rights when he nodded that he understood after his co-defendant read his rights to him and he appeared to read them from a card); United States v. Tutino, 883 F.2d 1125, 1139 (2d Cir. 1989) (finding that the defendant's affirmative nod coupled with saying 'yes' was a valid waiver of Miranda rights); United States v. Graves, 1997 U.S. App. LEXIS 3310, \*4-7 (4th Cir. 1997) (finding that by responding with affirmative nods and 'uh-huhs' to questions about whether the defendant understood his rights constituted a valid waiver). Islam also understood English sufficiently to waive his rights. See, e.g., United States v. Jaswal, 47 F.3d 539, 542 (2d Cir. 1995) ("[T]he defendants were found to have a reasonably good command of the English language" and were found to have knowingly and validly waived their rights). Finally, Islam was not coerced or misled into waiving his rights by Trulli or her supervisor. Based on the totality of the circumstances, Islam's waiver of his Miranda rights was valid in that it was knowing, intelligent, deliberate, and voluntary.

## **ii. Voluntariness of Confessions**

Based on the same legal framework set forth above concerning Islam's confession in Bangladesh, Islam was not coerced and did not make the statement involuntarily at the Passport Office in Norwalk. While Special Agent Trulli admitted that she used a ruse to get Islam to

come to the Norwalk Passport Office, that ruse – telling him that he could pick up his passports, and not telling him he would be arrested – was not coercive of his confession. Rather, Islam was Mirandized and arrested *before* he made his statement. Indeed, Islam was not questioned at all prior to his confession, which was also made before he was handcuffed. Thus, although Islam may have been misled as to the purpose behind Trulli's request to come to Norwalk, it was clear to him that he was facing criminal prosecution when he made his statement. Additionally, there is no indication that Islam was subjected to any physical or verbal coercion. He was not held for a long period of time, deprived of food or sleep, subjected to an uncomfortable physical environment, or threatened in any way – all circumstances that could lead a court to find that a confession was involuntarily. Instead, Islam's interaction with Trulli at the Norwalk facility was brief and was not coercive. While it is apparent that Islam understood English, after Islam's confession Trulli decided to stop the interview and waited for an interpreter before proceeding. That decision indicates that Trulli was not attempting to coerce statements from him.

Based on the totality of the circumstances, the Court concludes that the confession in Norwalk was made voluntarily and was not the product of coercion. It, therefore, will not be suppressed.

### **III. Conclusion**

The defendant's Motions to Suppress [Doc. #22] and [Doc. #57] are DENIED.

So ordered this \_28<sup>th</sup>\_ day of April, 2006 at Hartford, Connecticut.

\_\_\_\_\_/s/ CFD\_\_\_\_\_  
**CHRISTOPHER F. DRONEY**  
**UNITED STATES DISTRICT JUDGE**